1994

Garold Horrocks v. Westfalia Systemat : Brief of Appellee

Utah Court of Appeals

Marcus Taylor; Attorney for Appellee.
Paul D. Lyman; Attorney for Appellant.

IN THE COURT OF APPEALS OF THE STATE OF UTAH

GAROLD HORROCKS, Plaintiff and Appellee, vs. WESTFALIA SYSTEMAT, a division of Centrico, Inc., Defendant and Appellant; and MAGIC VALLEY QUALITY MILK PRODUCERS, INC., Defendant (not party to appeal)	*	DOCKET NO. 940201 Case No. 940201-CA Priority No 15

BRIEF OF APPELLEE

APPEAL FROM THE SIXTH JUDICIAL DISTRICT COURT
OF WAYNE COUNTY, STATE OF UTAH
Honorable Don V. Tibbs, District Judge

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STATEMENT OF JURISDICTION

Jurisdiction in the Supreme Court was proper under UCA §78-2-2(3)(j). The Court of Appeals has jurisdiction by assignment from the Supreme Court pursuant to UCA §78-2-2(4).

STATEMENT OF THE ISSUE AND STANDARDS FOR APPELLATE REVIEW

ISSUE

The sole issue presented for review on appeal is whether appellee (hereinafter "Horrocks") committed fraud by signing a document which states that he had received equipment when both parties to the transaction knew that the equipment had never been delivered. Appellant (hereinafter "Westfalia") claims that fraud occurred because the document was false. The trial court did not find fraud because both parties knew that Horrocks had only received part of the equipment.

Findings of fact are reviewed under the clearly erroneous standard of Rule 52, Utah Rules of Civil Procedure. Deference is given to the factual assessments of the trial court and findings will not be disturbed unless they are without adequate evidentiary foundation. Copper State Leasing Co. v. Blacker Appliance & Furn. Co., 770 P.2d 88 (Utah 1988); Western Capital & Secs., Inc., v. Knudsvig, 768 P.2d 989 (Utah Ct. App.), cert. denied, 779 P.2d 688 (Utah 1989). A factual finding is clearly erroneous if against the great weight of the evidence or if the reviewing court is otherwise definitely and firmly convinced that a mistake has been made. State v. Walker, 743 P.2d 191 (Utah 1987); State v. Burk, 839 P.2d

880 (Utah Ct. App. 1992), cert. denied, 853 P.2d 897 (Utah 1993).

The ultimate conclusion of the trial court (that no fraud occurred) is a question of law and should be reviewed for correctness with no particular deference to the trial court. Eskelsen v. Town of Perry, 819 P.2d 770 (Utah 1991); Bailey v. Call, 767 P.2d 138 (Utah Ct. App.), cert. denied, 773 P.2d 45 (Utah 1989).

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES, AND REGULATIONS

Appellee does not contend that any issue presented by this appeal is resolved by the interpretation of a constitutional provision, a statute, ordinance, rule, or regulation.

STATEMENT OF THE CASE

Horrocks filed suit against Westfalia and Magic Valley to avoid paying for dairy equipment which he claims was ordered but never received. Westfalia as the seller and Buchanan as its agent had agreed to sell and deliver the equipment to Horrocks. The purchase price for the equipment was $14,000.00. Horrocks paid a down payment, and Westfalia agreed to finance the balance. As security, Horrocks gave Westfalia a milk assignment whereby Magic Valley, the buyer of the Horrocks' dairy products, would withhold money from proceeds otherwise payable to Horrocks and remit directly to Westfalia.

Westfalia answered and counterclaimed in an effort to recover under the contract documents according to their terms.

Magic Valley answered by saying that it would handle the milk assignment proceeds in such manner as the court directed.

Following bench trial, the District Court ordered Horrocks to pay for the equipment which he actually received, but excused him from paying for equipment which was never delivered.

STATEMENT OF FACTS

Horrocks is a diary farmer doing business in Wayne County, Utah (T.54). He became acquainted with Buchanan when the latter repaired some dairy equipment at the Horrocks' barn (T.55). The two had a number of discussions thereafter about updating some of the Horrocks milking equipment (T.55). Buchanan told Horrocks that he was representing Westfalia (T.55, 56). The vehicle used by Buchanan had the Westfalia insignia on it (T.56). Buchanan explained that documentation for the purchase of new equipment would come from Westfalia (T.56).

Some time in April, 1991, Horrocks placed an equipment order and wrote a check for the down payment which was payable to Westfalia at the direction of Buchanan (T.57). Westfalia financed the balance of the purchase price (T.34). The down payment check of $1,450.00 was received and cashed by Westfalia on April 24, 1991 (T.39). Horrocks signed an ordinary promissory note and security agreement, and Westfalia then shipped the equipment on two difference dates in May, 1991 (T.40). Buchanan had on hand some of the equipment for the order because of a failed sale to another customer.

Buchanan explained to Horrocks that the equipment would be delivered in two to three months (T.58). Part of the dairy equipment was later received by Horrocks (T.58), but some items were never delivered (T.59-64). The value of the dairy equipment actually received by Horrocks was $4,853.80 (T.76).

On September 4, 1991, Buchanan presented to Horrocks a Purchaser's Acknowledgment and ask him to sign it. The document states that the buyer had received all equipment which had been ordered. Horrocks did so, and at that time both Horrocks and Buchanan knew that the balance of the equipment had never been delivered. (Exhibit 12, T.9; Findings of Fact, Paragraph 14).

Horrocks continued to request that the equipment be delivered. He contacted Buchanan several times during the remainder of 1991 (T.65), and complained to both Westfalia and Magic Valley in January or February, 1992 (T.43 and T.67).

Horrocks also attempted to interrupt the milk assignment, and Westfalia was aware of that effort (T.44). Apparently Buchanan made off with the undelivered equipment, since it was never received by Horrocks.

SUMMARY OF ARGUMENT

There was no fraud when the parties signed the Purchaser's Acknowledgment which stated that all dairy equipment had been delivered, because the parties were both aware that Horrocks had not received all of the equipment. No one was misled. Each knew the true facts.

The statements and actions of Buchanan bound Westfalia because of the agency relationship.

This court should not consider the claims raised on appeal by Westfalia because it has failed to marshall the evidence in its attack on the findings of the trial court.

ARGUMENT

POINT I

WESTFALIA IS BOUND BY BUCHANAN'S ACTIONS

The trial court found that Westfalia and Buchanan stood in relationship to one another as principal and agent (Findings of Fact, Paragraphs 2, 3, and 10). That finding has not been questioned by Westfalia on appeal. Thus, Westfalia is bound by the actions of Buchanan. Horrocks dealt with Buchanan under circumstances where he understood and believed that Buchanan was in fact an agent of Westfalia, and indeed, he was told as much. Thus, the failure of the dairy equipment to be delivered to Horrocks is a simple breach of contract which is imputable to Westfalia.

In Skerl v. Willow Creek Coal Co., 69 P.2d 502 (Utah 1937), the Utah Supreme Court, quoting prior authorities, stated the following concerning the binding effect of an agent's conduct upon his or her principal:

> It is a general principle of the law of agency, running through all contracts made by agents with third parties, that the principals are bound by the acts of their agents which fall within the apparent scope of the authority of the agents, and that the principals will not be permitted to deny the authority of their agents against innocent third parties, who have dealt with those agents in good faith. That general principle of agency is universally

> recognized and applied by the courts, and is laid down by every text-writer who has written upon the subject of agency. Harrison v. Auto Securities Co., 70 Utah, 11, 257 P. 677, 57 A.L.R. 388.

This is a simple case. Westfalia as principal, acting by its agent, Buchanan, agreed to sell and deliver dairy equipment to Horrocks. Horrocks signed a promissory note and security instruments to reflect the deferred purchase price, but he never received all of the equipment which he had ordered. The situation presents an ordinary breach of contract. All of the necessary equipment to fulfill the order was apparently shipped to Buchanan, but he failed to make full deliver to Horrocks. The case has nothing to do with fraud. The trial court was correct in finding that Horrocks should pay for the equipment which he actually received while relieving him from the obligation to pay for equipment not delivered. If Buchanan "went south" with the goods, the loss in that regard should properly fall upon the shoulders of Westfalia and not Horrocks.

> ...a duty rests upon every person, in the management of his own affairs, whether by himself or by his agents, so to conduct them as not to injure another, and that if he does not do so, and another is thereby injured, he shall answer for the damage. This principle does not work any injustice to the principal, for it is based upon the policy of protection of the third person and results from the consideration that it is the principal who makes it possible for the agent to inflict the injury. 3 Am. Jur. 2d, Agency, Section 270, Page 773.

The act of an agent within the sphere of the authority granted to him by the principal is as binding upon the principal as if done by the principal himself. Hoffman v. John Hancock Mut.

Life Ins. Co., 92 U.S. 161, 23 L.Ed 539; Fox v. Lavendar, 56 P.2d 1049 (Utah 1936).

Whatever an agent does in the lawful exercise of his authority is imputable to the principal. Vicksburg & M. Railroad v. O'Brien, 119 U.S. 99, 30 L.Ed 299, 7 S. Ct. 118. All rights and liabilities which accrue to the agent from transactions with third persons also accrue to the account of the principal. Doherty v. Carruthers, (1st Dist) 171 Cal App. 2d 214, 340 P.2d 58.

When misconduct of an agent causes loss, it should be borne by the person who empowers the agent to commit the wrong, and not by the person who relies upon the acts and conduct of the agent. County of Macon v. Shores, 97 U.S. 272, 24 L.Ed 889. A person who deals with an agent is entitled to the same protection as if he engaged in the transaction directly with the principal. Angle v. North-Western Mut. Life Ins. Co., 92 U.S. 330, 23 L.Ed 556.

POINT II.

THE TRIAL COURT WAS CORRECT IN DECLINING TO FIND FRAUD

Each argument raised by Westfalia on appeal is grounded in the claim that Horrocks committed fraud by signing the Purchaser's Acknowledgment which is dated September 4, 1991. Westfalia contends that the document reflects an acknowledgment by Horrocks that he had received all of the dairy equipment, and thus that is was false, since all of the equipment had not then been delivered. However, Horrocks signed the document at the insistence

of Buchanan at a time when both knew that full delivery of the equipment had not occurred. Neither was mislead nor deceived by the other. Each knew the true state of affairs.

A party claiming injury from fraud must demonstrate that he or she was ignorant of the false statement. Conder v. A.L. Williams & Associates, Inc., 739 P.2d 634 (Utah Ct. App. 1987). In this case it is questionable whether Horrocks made any statement at all since the document was furnished by Westfalia and Horrocks was led to believe that he needed to sign the instrument in order to obtain delivery of the equipment. Furthermore, no evidence was presented to show that Horrocks intended to induce Westfalia to act upon a false representation. In any event, Buchanan's knowledge that the equipment had not been delivered (he was the person responsible for the delivery), defeats any cause of action for fraud. Buchanan may have mislead Westfalia, but that is not the fault of Horrocks.

The only party to this action with a viable claim for fraud would be Horrocks, and not Westfalia. Horrocks signed the Purchaser's Acknowledgement in reliance upon Buchanan's promises that the equipment would be forthcoming. It is Buchanan who lied, and Horrocks who suffered. (See for example, Berkely Bank for Co-Ops v. Meibos, 607 P.2d 798 (Utah 1980).

Since Westfalia has failed to demonstrate the existence of fraud, its claim that the trial court erred by not finding the element of reliance is simply not tenable. Indeed, the court need

not reach the reliance issue since there has not been a viable demonstration of fraud.

POINT III

WESTFALIA HAS FAILED TO MARSHALL THE EVIDENCE

Westfalia asserts that the trial court committed error in not finding the existence of fraud, and by not finding detrimental reliance based thereon. However, Westfalia has not marshalled the evidence which support the findings of the trial court, and then demonstrated that those findings are lacking in support as to be against the clear weight of the evidence. Accordingly, those claims should not be considered by this court on appeal. Oneida/SLIC v. Oneida Cold Storage & Warehouse, 236 Utah Adv. Rep. 24; West Valley City v. Majestic Inv. Co., 818 P.2d 1311, 1315 (Utah App. 1991); State v. Walker, 743 P.2d 191, 193 (Utah 1987).

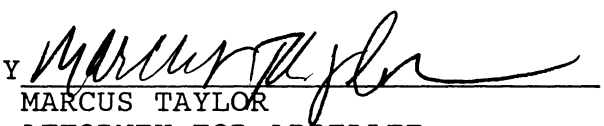
CONCLUSION

The transaction between the parties did not involve fraud because (a) both Buchanan and Horrocks knew that the Purchaser's Acknowledgment was signed before delivery of the dairy equipment, (b) no one was deceived or mislead by the other, and (c) Buchanan's knowledge of the situation was imputed to Westfalia since he was its agent. Furthermore, Westfalia has not marshalled the evidence to properly attack the findings of the trial court.

The case sounds in contract and not fraud. Westfalia, directly and by its agent, promised to sell and deliver dairy equipment to Horrocks, but failed to do so. The trial court was

correct in concluding that Horrocks should pay for the equipment which he received, and then excusing him from paying for goods not delivered. That result was sound and consistent with general principles of applicable law. The judgment of the trial court should be affirmed with costs on appeal to Horrocks.

Respectfully submitted,

BY 
MARCUS TAYLOR
ATTORNEY FOR APPELLEE

DELIVERY CERTIFICATE

On the 9th day of June, 1994, I delivered four copies of the foregoing BRIEF OF APPELLEE to: Paul D. Lyman, Attorney for Defendant/Appellant Westfalia Systemat, P.O. Box 100, Richfield, Utah 84701.

MARCUS TAYLOR
ATTORNEY FOR APPELLEE

ADDENDUM

Sixth Judicial District Court Findings of Fact and Conclusions of Law dated October 5, 1993

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IN THE SIXTH JUDICIAL DISTRICT COURT OF WAYNE COUNTY

STATE OF UTAH

GAROLD HORROCKS,	*	FINDINGS OF FACT AND CONCLUSIONS OF LAW
Plaintiff,	*	
vs.	*	
WESTFALIA SYSTEMAT, a division of Centrico, Inc., and MAGIC VALLEY QUALITY MILK PRODUCERS, INC.,	*	CASE NO. 920600010
Defendants.	*	JUDGE DON V. TIBBS

This cause was tried to the court sitting without a jury on June 24, 1993, the Honorable Don V. Tibbs, Sixth Judicial District Court Judge presiding, plaintiff appearing in person and by counsel, defendant Westfalia Systemat, a division of Centrico, Inc., appearing by its agent, Richard Blanford, and by its counsel, defendant Magic Valley Quality Milk Producers, Inc., not appearing, the parties having previously stipulated that said defendant need not participate in trial proceedings and that its only responsibility was to disburse monies now held by it in escrow to the party or parties as ordered by the court, evidence having been offered and received, argument by counsel having been entertained, now based thereon, THE COURT FINDS AND CONCLUDES AS FOLLOWS:

FINDINGS OF FACT

1. Plaintiff is a dairy farmer doing business at Fremont, Wayne County, Utah. He began discussing a business transaction with Wayne G. Buchanan, doing business as Southern Utah Dairy Supply, early in 1991. Their discussions related to the potential purchase by plaintiff of certain dairy equipment to upgrade plaintiff's milking barn.

2. Buchanan held himself out as an agent for defendant Westfalia Systemat in his discussions and negotiations with plaintiff, and never advised plaintiff at any time that he had any relationship to defendant Westfalia other than as its agent.

3. The negotiations between plaintiff and Buchanan led to interaction between plaintiff and defendant Westfalia Systemat in that they prepared, signed and exchanged contract documents, and later discussed their business transactions by telephone, and defendant Westfalia Systemat accepted a personal check written by plaintiff dated April 22, 1991 in the amount of $1,450.00 which was paid by plaintiff to defendant Westfalia Systemat as a down payment for the purchase of dairy equipment. During all of said discussions, negotiations, and interaction, defendant Westfalia Systemat held Buchanan out as its agent.

4. By virtue of the contract documents entered into

between plaintiff and defendant Westfalia Systemat, plaintiff agreed to purchase certain dairy equipment, but he was unable to pay the purchase price in full, and Buchanan made arrangements for defendant Westfalia Systemat to finance the deferred purchase price for the equipment which plaintiff intended to purchase. The total purchase price for the equipment was $14,000.00.

5. The contract documents entered into between the parties included an application for financing dated April 9, 1991 which plaintiff submitted to defendant Westfalia Systemat, a promissory note dated April 22, 1991 whereby plaintiff promised to pay to defendant Westfalia Systemat the deferred purchase price for the dairy equipment, a security agreement dated April 17, 1991 whereby plaintiff granted to defendant Westfalia Systemat a lien against said dairy equipment to secure said promissory note; two milk assignments, both dated January 8, 1991, which date is in error, one assignment reciting that payments would commence in May of 1991, and the other reciting that payments would commence in September of 1991, each payment being an assignment by plaintiff to defendant Westfalia Systemat of monies which plaintiff would receive for the sale of milk products to defendant Magic Valley; UCC financing statements to be filed with the Utah Secretary of State and Wayne County; and a purchaser's acknowledgment of receiving equipment, dated September 4, 1991,

executed by plaintiff, and forwarded to defendant Westfalia Systemat.

6. Each of said documents were prepared by defendant Westfalia Systemat and forwarded to Buchanan who in turn secured the signature thereon of plaintiff and returned the documents to Westfalia Systemat.

7. The majority of said documents were drafted, signed, and returned to defendant Westfalia Systemat in April of 1991, and thereafter, defendant Westfalia Systemat shipped dairy equipment having a value of $4,853.80. Said equipment was delivered to plaintiff.

8. Prior to any negotiations between plaintiff and defendant Westfalia Systemat, and prior to any negotiations between plaintiff and Buchanan, defendant Westfalia Systemat had shipped other dairy equipment to Buchanan which the latter intended to sell to another party by the name of Roberts. However, Roberts declined to complete the purchase of said equipment, and same remained in the possession of Buchanan, and Buchanan intended to use that equipment to fill the equipment order which had been made by plaintiff. However, Buchanan never delivered any of said remaining equipment to plaintiff.

9. The documents which were signed by plaintiff were presented to him by Buchanan while he was engaged in milking operations, and plaintiff signed said documents without careful

attention to them. Buchanan represented to plaintiff that the equipment would be forthcoming to him, and plaintiff relied upon Buchanan's representations with the belief and understanding that he was an agent for defendant Westfalia Systemat.

10. All of the acts and conduct on the part of Buchanan were performed as an agent of defendant Westfalia Systemat.

11. Plaintiff did not receive all of the property which he had agreed to purchase.

12. Any claims which either party has against Buchanan are now valueless because he obtained a discharge in bankruptcy and left the area and his whereabouts are not known to either party, despite diligent search to locate him.

13. Buchanan had been associated with defendant Westfalia Systemat for a period of approximately 10 years before the transaction with plaintiff. Buchanan had financial difficulties during that entire period of time, his financial difficulties were known by defendant Westfalia Systemat, and said defendant undertook precautionary measures in dealing with Buchanan because of said financial problems. However, defendant Westfalia Systemat never at any time advised plaintiff that Buchanan was in difficult financial circumstances.

14. Defendant Westfalia Systemat was advised of the failure

of the sale to Roberts, was advised by Buchanan that he intended to sell said equipment to plaintiff, and defendant Westfalia Systemat encouraged him to do so, but did not explain said circumstances to plaintiff. The purchaser's acknowledgment dated September 4, 1991, which was signed by plaintiff, was presented to him by Buchanan, and it was signed by plaintiff with full knowledge that he had not received the equipment which he had ordered, and further, Buchanan knew that plaintiff had not received all of said equipment, but again promised him that it would be forthcoming. Accordingly, even though the information contained on said document is false, its falsity was known by both Buchanan and plaintiff. Said document was submitted to defendant Westfalia, but any reliance placed upon said document by defendant Westfalia was not harmful to it because it did not part with anything of value in consequence of any such reliance.

15. The promissory note sued upon by defendant Westfalia Systemat in its counterclaim fails because of want of consideration because the equipment which plaintiff ordered was never received by him except for equipment having a value of $4,853.80.

16. Defendant Magic Valley disbursed to defendant Westfalia Systemat five monthly payments in the amount of $311.07 each from milk proceeds otherwise payable to plaintiff. Defendant Magic Valley has since retained the sum of $311.07 monthly from proceeds otherwise

payable to plaintiff for the sale of milk products, and the monies so retained are now held in escrow by defendant Magic Valley.

17. The sum of $1,450.00 which plaintiff paid to defendant Westfalia Systemat for a down payment was utilized to the extent of $50.00 as a processing fee. The balance of said sum of $1,400.00 is a credit in favor of plaintiff, and the five payments of $311.07 each which defendant Magic Valley disbursed to defendant Westfalia Systemat are likewise credits in favor of the plaintiff.

CONCLUSIONS OF LAW

1. Defendant Westfalia Systemat should have and recover of plaintiff the sum of $4,853.80, together with interest thereon at the rate of 12% per annum from and after May 20, 1991, less the sum of $1,400.00, received at or before said date, and less the additional five monthly milk assignment disbursements of $311.07 each, which should be credited against said balance as of the respective dates when disbursed.

2. The balance of the monies held in escrow by defendant Magic Valley should be disbursed to defendant Westfalia Systemat to the extent necessary to satisfy in full the balance of said $4,853.80, after credits as aforesaid, and if insufficient, defendant Westfalia Systemat should have judgment against plaintiff for said sum. If more than sufficient, the excess should be paid over and disbursed to

plaintiff.

3. To the extent recited above, the court finds in favor of plaintiff on his complaint, and against defendant Westfalia Systemat on its counterclaim.

4. After disbursement of the monies now held by defendant Magic Valley, judgment should enter in favor of defendant Westfalia Systemat and against plaintiff if said monies are deficient, or if not deficient, judgment of dismissal with prejudice should enter as against all parties and all claims in this cause.

5. All contract documents among the parties should be extinguished and annulled, including said milk assignments which were given by plaintiff to defendant Magic Valley and said defendant should forthwith cease and terminate any further retention and disbursement of monies thereunder.

DATED this 5th day of October, 1993.

BY THE COURT

DON V. TIBBS, DISTRICT JUDGE

MAILING CERTIFICATE

On the 15th day of September, 1993, I mailed a copy of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW by United States

mail, first-class postage thereon, to: Paul D. Lyman, Attorney at Law, 250 North Main, Richfield, Utah 84701.

Cheryl Barton
Secretary